

MICHIGAN SUPREME COURT



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FOR IMMEDIATE RELEASE

LAW FIRM'S CLAIM FOR UNPAID LEGAL FEES, SENTENCING CHALLENGE TO BE HEARD BY MICHIGAN SUPREME COURT IN ARGUMENTS THIS WEEK

LANSING, MI, May 4, 2009 – A law firm's claim against a former client for unpaid legal fees will come before the Michigan Supreme Court for oral argument this week.

In [*Seyburn, Kahn, Ginn, Bess, Deitch and Serlin v Bakshi*](#), the Michigan Court of Appeals allowed a Southfield law firm to withdraw from representing its client in an order dated September 30, 1993. The firm sent its former client an invoice for \$55,723.36 in unpaid legal bills, plus \$460.50 in fees for services provided from October 3, 1993 through October 12, 1993, related to the client's request for the return of his litigation files. The parties dispute whether the statute of limitations has run out on the law firm's claim. Among the issues in this case is whether the law firm's claim for its unpaid fees accrued on the date the attorney-client relationship was terminated by the Court of Appeals, or whether the firm's claim did not accrue until October 12, 1993, the last date for which the firm billed its former client.

The Court will also hear oral argument in [*People v McGraw*](#), in which the defendant challenges the scoring of an offense variable used in calculating the length of his sentence. The defendant and two companions broke into a store; they fled from police in a car before crashing into a chain-link fence. The sentencing judge assessed 10 points for "2 to 9 victims" under OV 9, but the defendant contends that, at most, the only victim of the break-in was the store owner, who, the defendant maintains, was not placed in danger of physical injury or loss of life. The prosecutor argues that the sentencing judge properly scored OV 9 because both the store owner and the police officer who pursued the defendant were at risk for injury.

Court will be held on **May 5** in the Supreme Court's courtroom on the sixth floor of the Michigan Hall of Justice in Lansing. Oral arguments will begin at **9:30 a.m.** The Court's oral arguments are open to the public.

On May 13, the Court will also hold an oral argument in [*Roberts v Saffell*](#) at the historic St. Joseph County Courthouse. The hearing is part of the "[Court Community Connections](#)" program, in which the Court travels to different locations throughout Michigan to hear cases. More information about this event will be available this week.

Please note: the summaries that follow are brief accounts of complicated cases and may not reflect the way that some or all of the Court's seven justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their

cases. Briefs in the cases are available online at http://www.courts.michigan.gov/supremecourt/Clerk/MSC_orals.htm. For further details about the cases, please contact the attorneys.

Tuesday, May 5, 2009
Morning Session Only

SEYBURN, KAHN, GINN, BESS, DEITCH AND SERLIN, P.C. v BAKSHI ([case no. 136436](#))

Attorney for plaintiff Seyburn, Kahn, Ginn, Bess, Deitch and Serlin, P.C.: Barry R. Powers/(248) 353-7620

Defendant pro per Kirit Bakshi: Kirit Bakshi/(248) 661-5931

Trial Court: Oakland County Circuit Court

At issue: A law firm sued its former client for unpaid legal fees. The trial court entered judgment for the law firm, but the Court of Appeals reversed, finding that the firm's claim was barred by the six-year statute of limitations. Was the firm's lawsuit brought to recover the balance due upon a mutual and open account? If so, does MCL 600.5831 apply to an action brought by an attorney against his client to recover unpaid legal fees? Can legal services performed after the termination of an attorney-client relationship be "the last item proved in the account" under MCL 500.5831? Can there be a "mutual and open account" after termination of an attorney-client relationship? Does a claim by an attorney against his client for unpaid legal fees always accrue on the date the attorney-client relationship ends?

Background: The statutory limitations period for a breach of contract action is six years. MCL 600.5807(8). A claim for breach of contract accrues when the promisor fails to perform under the contract. But in a lawsuit to recover the balance due on a mutual and open account, the statute of limitations begins to run "at the time of the last item proved in the account." MCL 600.5831. One of the questions in this case is whether MCL 600.5831 applies in an attorney's lawsuit to recover unpaid fees from a client and, if so, when the "last item proved in the account" occurred.

In November 1989, Kirit Bakshi retained the law firm of Seyburn, Kahn, Ginn, Bess, Deitch and Serlin, P.C., to represent him and his companies in several matters. Bakshi paid for the Seyburn firm's legal services until November 1992, after which he refused to pay the remaining fees of \$50,603.00. At that time, Seyburn was representing Bakshi in a case that was pending in the Michigan Court of Appeals; on Seyburn's motion, the Court of Appeals, in an order dated September 30, 1993, allowed the firm to withdraw as Bakshi's counsel.

After the attorney-client relationship was terminated, Bakshi asked Seyburn for his litigation files. In early October 1993, Seyburn reviewed the files to determine what documents needed to be copied and sent to Bakshi. On November 12, 1993, Seyburn sent Bakshi its final invoice showing a total unpaid balance of \$55,723.36. Seyburn also charged Bakshi \$460.50 in costs and fees related to the return of Bakshi's files, including fees for services provided from October 3, 1993 through October 12, 1993. Bakshi never paid the final invoice.

On June 30, 1995, Bakshi sued Seyburn for malpractice. The trial court rejected Seyburn's claim that the malpractice complaint was not filed within the two-year statute of limitations, holding that Seyburn last performed legal services for Bakshi in October 1993. The

trial court eventually dismissed the lawsuit on other grounds; the Court of Appeals affirmed the lower court.

Seyburn then sued Bakshi on October 8, 1999, seeking \$62,763.49 in unpaid legal fees. Bakshi asked the court to dismiss the case on the basis that the statute of limitations had expired. Seyburn's breach of contract claim accrued in November 1992 when Bakshi stopped paying Seyburn's invoices, Bakshi argued, so the the six-year statute of limitations for breach of contract claims expired in November 1998. Bakshi argued in the alternative that, to the extent Seyburn was proceeding under an open account theory, the claim accrued in March 1993, because that was the last date Seyburn performed any legal services for Bakshi's benefit. Bakshi contended that he received no benefit from Seyburn's April 1993 motion to withdraw as counsel in the Court of Appeals or from Seyburn's October 1993 review of his files, so accordingly, the six-year limitations period for an open account claim expired in March 1999. Seyburn countered that it last performed legal services for Bakshi on October 12, 1993 and that, as a result, the limitations period did not expire until October 12, 1999, four days after Seyburn filed the complaint. Moreover, since the trial court in the malpractice case held that Seyburn last performed legal services for Bakshi in October 1993, Bakshi was barred from relitigating that issue, Seyburn maintained. The trial judge granted Bakshi's motion for summary disposition. Ultimately, the trial court ruled in Seyburn's favor, finding that the work that Seyburn performed in October 1993 was at Bakshi's request and for his benefit, and that the limitations period therefore did not begin to run until October 12, 1993, meaning that Seyburn's complaint was filed within the six-year statute of limitations. With interest on the original amount of unpaid fees, the judgment in Seyburn's favor came to \$573,168.07. But in a published opinion, the Court of Appeals reversed the trial court's judgment and remanded the case for entry of judgment in Bakshi's favor. Seyburn's claim accrued on September 30, 1993, the date on which the parties' attorney-client relationship was terminated by the Court of Appeals order allowing Seyburn to withdraw as Bakshi's counsel, the Court of Appeals held, so the statute of limitations had expired before the firm filed its lawsuit. Seyburn appeals.

PEOPLE v MCGRAW ([case no. 132876](#))

Prosecuting attorney: Randy L. Price/(989) 790-5330

Attorney for defendant Matthew Lloyd McGraw: Anne M. Yantus/(313) 256-9833

Trial Court: Saginaw County Circuit Court

At issue: In sentencing criminal defendants, trial courts use statutory "offense variables," which assign a number of points based on various factors in the crime; the number of points is used to determine the length of the sentence. Are the offense variables to be scored based on (a) the defendant's conduct in committing the specific offense for which the guidelines are being scored, (b) the defendant's conduct during the entire criminal transaction, or (c) the defendant's conduct during the specific offense being scored and any offenses resulting in conviction that arise out of the same transaction and are enumerated in MCL 791.233b? When is an offense completed for purposes of scoring the offense variables? Can an accomplice to the underlying crime be considered a "victim" under MCL 777.39 (OV 9)? Was the defendant in this case properly assessed 10 points for "2 to 9 victims" under OV 9 where he broke into an unoccupied store but, in the course of driving away with two accomplices, led police on a car chase ending in a collision?

Background: At issue in this case is the sentence that Matthew McGraw received for a January

5, 2003 break-in of the Marion Springs General Store. According to the presentence report, police responded to an audible alarm at the General Store on that date. A witness saw a large car backed up to the door with the trunk open and three unknown males near the vehicle. En route to the store, police officers observed a vehicle matching the description and pulled it over. When the police exited their vehicle, the car sped away and the officers pursued. The car crashed into a chain-link fence and the three occupants fled on foot. The officers apprehended McGraw in the area and recovered stolen merchandise from the trunk. The store owner reported a total loss of \$4,918, including \$100 in unrecovered cash.

McGraw pled guilty to three counts of breaking and entering a building with intent to commit larceny (MCL 750.110), in exchange for the prosecution dismissing other pending charges and the promise of a sentence within the sentencing guidelines. At the plea hearing, he admitted that on three separate occasions he and two others went to a store, broke a window intending to steal property, took property from the store, loaded it into a car, and drove away.

In sentencing criminal defendants, trial courts use statutory “offense variables,” which assign a number of points based on various factors in the crime; the number of points is used to determine the sentencing guidelines that the trial court considers in setting the minimum length of the defendant’s sentence. OV 9, MCL 777.39, is scored based upon the number of victims of a crime. At the relevant time, OV 9 was to be scored at 10 points if there were two to nine crime victims. MCL 777.39 instructs the court to “[c]ount each person who was placed in danger of injury or loss of life as a victim.” MCL 777.39(2)(a).

In McGraw’s case, OV 9 was scored at 10 points; his minimum sentence was calculated to be between 29 and 114 months. McGraw’s trial counsel stated, at sentencing, that the sentencing guidelines used to arrive at these numbers appeared to be correct. For the January 5, 2003 break-in, McGraw was sentenced, as a fourth habitual offender, to serve nine to 30 years; he received concurrent terms of six to 30 years for his other two convictions. In the Court of Appeals, McGraw challenged the scoring of OV 9 and argued that his trial counsel provided ineffective assistance of counsel in failing to object to the OV 9 scoring. McGraw contended that, at most, the store owner was the sole victim of the January 5, 2003 break-in, although even the store owner was not placed in danger of physical injury or loss of life, McGraw maintained. OV 9 should have been scored at zero points, McGraw argued, which would have resulted in a minimum sentence within the sentencing guidelines of no more than 76 months. The prosecutor countered that both the store owner and the police officer who pursued McGraw were placed in danger of injury as a result of McGraw’s crime, so OV 9 was properly scored at 10 points. The Court of Appeals affirmed defendant’s sentence in an unpublished per curiam opinion. McGraw appeals.

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